

**CITY OF SHORELINE
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

APPELLANT: Shoreview Preservation Committee

APPLICANT: Wendy Barry, Director, City of Shoreline Parks Department

FILE NUMBER: #2000 1672

APPEALS: Clearing and Grading Permit #2000-1672
SEPA Addendum for Improvement to Existing Shoreview Park
Environmental Checklist (1993) and Shoreview Park
Improvements Revised Environmental Checklist (1995)

REVIEW PROCESS: The Hearing Examiner holds an open record hearing on the appeal of the Clearing and Grading Permit and SEPA Addendum. Presentation of testimony and argument is limited to the applicant, appellant and City staff as parties to the appeal. The Hearing Examiner makes a decision regarding the SEPA Addendum and the Clearing and Grading Permit.

I. BACKGROUND INFORMATION SUMMARY:

- A. The Proposed Project:** Clearing and grading for a baseball field, parking lot expansion, restrooms and playground at Shoreview Park with associated habitat enhancement and drainage improvements.
- B. Zoning Designation:** The subject property is zoned Residential – 4 Units Per Acre (R-4) with park and trail uses being permitted.
- C. State Environmental Policy Act (SEPA):** A SEPA Addendum was issued December 27, 2000 containing 14 mitigation measures and conditions.
- D. Procedural History:** The application for this property has been processed in the following sequence:
- Determination of Non-Significance (August, 1993)- This threshold decision was issued by King County for park improvement that included the ballfield, restrooms, play area and parking lot expansion which are improvements being constructed with the permit under appeal.

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- It was appealed to the King County Hearing Examiner, who sustained (April 1994) the DNS in part and remanded for an EIS on the proposed ballfields and their supporting structures (e.g., storm water retention) improvement to study impacts to the natural and built environments. The children's play area, the parking areas and the restrooms were not required to undergo further environmental review.
- Draft Environmental Impact Statement – Shoreview Park Capital Project, (August, 1996), Analysis of 4 alternatives of which 2 are in Shoreview Park
- Final Environmental Impact Statement – Shoreview Park Capital Project, February 1999, Analysis of 4 alternatives of which 2 are in Shoreview Park (City Exhibit A)
- Project No. 1999-746, a Clearing and Grading permit involved 5 acres with 2 ballfields located on the lower bench area, additional parking and 1.5 acres of habitat mitigation. This application was withdrawn prior to a decision after a pre-decisional public hearing conducted by the City of Shoreline Hearing Examiner July 7, 1999.
- Project No. 2000-1672, a Clearing and Grading permit (City Exhibit B) involves 4.8 acres with one ballfield located to the south of the park entry with additional parking and 1.8 acres of habitat enhancement mitigation was submitted October 18, 2000..
- A Notice of Application was posted October 25, 2000, which included project information and the intent to issue an addendum to the 1993 and 1995 SEPA checklists. Eight letters were received during the public comment period (City Exhibit C).
- A SEPA addendum to the *Improvement to Existing Shoreview Park Environmental Checklist* (1993) and *Shoreview Park Improvements Revised Environmental Checklist* (1995) ("Addendum") was issued December 27, 2000 (City Exhibit D).
- A clearing and grading permit approval was granted on January 11, 2000 (City Exhibit E).
- A Notice of Decision was issued January 11, 2001 (City Exhibit F).
- Appellants filed an appeal on the decision at the City Clerk's Office on January 17, 2000.
- The Hearing Examiner conducted an Open Record Public Hearing on March 21, 2001.

E. Issues of the Appeal:

In the January 17, 2001 appeal letter submitted to the City by the Shoreview Preservation Committee four issues were identified:

1. The drainage plans provided in the Conditions of Approval do not adequately protect the salmonid stream of Boeing Creek. The plan is not in compliance with current development codes for salmonid streams nor does it take into account the entirety of the project. There does not currently exist an accurate portrayal of what the drainage system looks like in its entirety, including the impact it may have on surrounding residences.
2. Current mitigation measures as approved in the Conditions of Approval do not enhance or protect the habitat. The mitigation plan ignores the findings in the FEIS for Shoreview Park.
3. The Conditions of Approval do not provide or protect passive recreational opportunities in the park. It ignores the Hearing Examiner's 1994 decision and the FEIS for Shoreview Park.

4. As appellant in the issue, the SPC has continually asked to be involved in the process of protecting and enhancing the habitat and we have been ignored.

F. Summary of Applicable Codes and Regulations

1. SMC Zoning and Clearing and Grading Requirements

The subject property is zoned R-4; Residential, 4 Units per Acre. Under Shoreline Municipal Code (SMC) Section 20.40.140 parks and trails uses are permitted. The proposal must meet the General Development Standards of SMC Section 20.50, specifically parking Section 20.50.380, and clearing and grading Section 20.50.290. The proposal requires a Clearing and Grading Permit because it involves movement of over 50 cubic yards of soil.

2. State Environmental Policy Act (SEPA) Requirements

The Shoreline Municipal Code Section 20.30.490 and WAC 197-11-800 require environmental review of this project based on the location of the site near a critical area and the quantity of grading proposed. However, consistent with WAC 197-11-600, the City used existing environmental documents for the current proposal. Analysis of field construction at the proposed site is contained in the Shoreview Park Capital Project Final Environmental Impact Statement (FEIS). The FEIS meets the SEPA procedural and substantive requirements for those portions of the current proposal that include construction of the ball field and appurtenances. The Addendum covers minor changes to the proposed non-field improvements in the current proposal that were not included in the two previous environmental checklists. The Addendum covers reduction of the proposed number of parking stalls, reconfiguration of parking stalls, the addition of a play area, the addition of a restroom, and other changes in the current proposal when compared to the improvement described in the 1993 Environmental Checklist are minor and unlikely to cause significant adverse impacts.

A Notice of Application as specified in SMC Chapter 20.30.120 was used. (City Exhibit G)

3. Storm and Surface Water Manual (Shoreline Municipal Code Title 20)

The Shoreline Municipal Code Section 20.60.080 adopts thresholds for a drainage review including the addition of 1,500 or more square feet of impervious surface. Flow control and Water Quality treatment are also triggered by this project (SMC 20.60.090C, H). The Surface Water Design Manual amends the King County 1998 Surface Water Design Manual in the City's Engineering Guide.

4. Street Standards (Shoreline Municipal Code Title 20)

The Shoreline Municipal Code Section 20.70 and Engineering Development Guide for road standards requires urban street standards for new developments. The classification for Innis Arden Way, as determined by the Transportation Engineering Division is a "collector". The required standards for this classification include curb, gutter and sidewalks along collector streets for new development.

G. Public Hearing

On March 21, 2001, the Hearing Examiner held a public hearing on the appeals. The hearing was opened at 7:05 p.m. in the Mount Rainier Room of the Shoreline Conference Center. The oral testimony portion of the hearing was closed at 10:35 p.m.

The public hearing was continued to allow review of documents by each party and to submit final rebuttal arguments. The following schedule was established:

- March 23, 2001: City submission of draft mitigation plan (Exhibits O, P, Q)
- March 30, 2001 City submission of comments on Exhibit I (Exhibit S)
 Appellant submission of comments on draft mitigation plan
 (Exhibit R)
- April 3, 2001: City / appellant submission of any rebuttals (Exhibit U).
- April 10, 2001 City / appellant submission of final rebuttals and closing arguments.
 (Exhibits X & Y)

At the beginning of the public hearing the Hearing Examiner indicated that he had previously visited the site and that had reviewed the written record including the Grading and Clearing Permit File, the appeal letter and Staff Report with attachments submitted by the City of Shoreline. He noted that only parties of record would be allowed to participate in the hearing and that the burden of proof is that of the appellant. Each witness was asked to affirm that the information they provided was true.

Background testimony on the application was presented by the City of Shoreline. The appellant presented their case with questions of witnesses by the City. Copies of information provided by witnesses for the appellant were included in Exhibit I. Following the appellant's presentation, the City presented their rebuttal with questions of witnesses by the appellant. As previously indicated, the review of documents, final arguments and rebuttal were received in written form after the conclusion of oral testimony.

Those who testified were as follows:

City of Shoreline:

Ian Sievers, City Attorney
 Kevin W. Teague, Foster Pepper & Shefelman PLLC
 Paul Cohen, Planner III, Planning and Development Services
 Daniel Bretske, Project Engineer, Planning and Development Services
 Chuck Purnell, City Engineer, Public Works
 Gabe Snedeker, Environmental Planner, Planning and Development Services
 Catherine Conolly, Wildlife and Fisheries Program Manager, Adolfson Associates, Inc.

Shoreview Preservation Committee:

Richard Aramburu, Attorney
 JoAnn Laz, Shoreview Preservation Committee
 Michael Dossett, Birdwatcher
 W. Darryl Thompson, President, Pilchuck Audobon Society

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Don Norman, Norman Wildlife Consulting
Matthew Loper, Prof. Of Environmental Science, Shoreline Community College
Eric Pentico, Washington Department of Fish and Wildlife
Ray Pelly,
Llyn Doremus, Waster Resources Manager, NooksackTribe

Objections Raised By City Of Shoreline:

During the course of the public hearing the City objected to information being presented by the appellant's witnesses (Exhibit I) and requested that they be afforded the opportunity to respond specifically after having a chance to review the written material. The Hearing Examiner ruled that they could submit an objection after having time to review the written information. This was done in a memorandum dated March 30, 2001 from Ian R. Sievers, City Attorney (Exhibit S). Richard Aramburu responded to the objections in Exhibit U.

The City objects to the information as an extension of the environmental arguments made at the pre-decision hearing in 1999 and thereby not relevant to the appeal that is specifically related to possible violations of City development regulations in issuing the clearing and grading permit. The appellant argues that the information from the previous appeal is relevant and are considered part of the environmental documents under WAC 197-11-744.

The Hearing Examiner notes the objections of the City and will consider the relevance of the information submitted by the appellant in the decision. However, the information provided by the appellant will be retained in the appeal record.

II. ANALYSIS OF APPEAL ISSUES

The Appellant has the burden of establishing the decision of the City is not supported by the preponderance of evidence. Rules of Procedure Before the Hearing Examiner (RP), Resolution 130, Ex. A, Rule 9.8. In SEPA appeals the decision of the responsible official shall be entitled to substantial weight. RCW 43.21C.075(3)(d), (City Exhibit H). If there is substantial evidence to support the agency decision, that decision should not be overturned, even if a different decision is also reasonable.

A. ISSUE 1

The appellant contends that the drainage plans provided in the Decision's Conditions of Approval do not adequately protect the salmonid stream of Boeing Creek. They believe the plan is not in compliance with current development codes for salmonid streams and does not take into account the entirety of the project. There does not currently exist an accurate portrayal of what the drainage system looks like in its entirety, including the impact it may have on the surrounding residences.

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Discussion

The proposed development of the ballfield is at its closest point 500 feet from Boeing Creek (Type 2 stream) to the north and west; however portions of the drainage facilities are within 200 feet. The maximum buffer width for a Type 2 stream and wetland is 100 feet under the SMC Title 20.80. The City's site analysis found the slopes of Shoreview Park to not be erosion prone or too steep except along the Boeing Creek ravine and areas east (upland) of the project site. Testimony by the appellant raised concerns that the concentration of the discharged surface water on the lower bench area has the potential to exacerbate the existing landslide and erosion hazards present on this site. A review of the City's consulting reports does not indicate that this issue was evaluated.

Stormwater management was reviewed for compliance with the 1998 King County Storm and Surface Water Manual through the *City of Shoreline Shoreview Park Draft Hydraulic Design Manual* October 2000 prepared by Reid-Middleton consultants (City Exhibit I). The project is designed to retain and probably decrease runoff from all existing and proposed developed areas through a reconstructed bio-swale along NW Innis Arden Way and north along the existing soccer field. Infiltration of run-off will occur into the lower bench area (City Exhibit J). The Clearing and Grading Permit Decision's Conditions of Approval implement a turf management program to minimize pollution from turf care practices (City Exhibit K). The drainage analysis included all developed portions of the park both existing and proposed (City Exhibit L). (Hydrology in other portions of the park such as the Boeing Creek Park North Pond and Hidden Lake has been studied.) The resulting run-off from the developed portions of the site is designed to bio-filtrate water for water quality and retain and infiltrate run-off to decrease and improve water quality to Boeing Creek. The City contends there will be no impacts to surrounding residences because run-off from the existing and proposed developed areas will be retained on-site.

B. ISSUE 2

The appellant contends that the current mitigation measures as provided in the Decision's Conditions of Approval do not enhance or preserve the wildlife habitat specifically on the lower bench area and ignores the findings in the Shoreview Park FEIS.

Discussion

The Shoreview Park FEIS suggested habitat enhancement for the lower bench area in conjunction with the proposed development of ballfields in that vicinity. The City notes that the purpose of the FEIS is to disclose potential impacts and discuss the range of mitigation measures that could be employed; however it does not mandate what actions will be taken or where. Staff examined the mitigating measures identified in the FEIS to develop mitigation required as a condition of the grading permit. These mitigation measures address specific impacts identified in the FEIS. The proposal under #2000-1672 will provide enhancement of areas with scrub / early successional plant community, occur in large blocks adjacent to the tennis courts and expanded parking, and would not preclude the lower bench from remaining natural with passive recreation.

The earlier proposal under application #1999-746 included a 1.5-acre enhancement area. The proposal has changed under application #2000-1672 to be smaller in scope and have less

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intrusion into the park and its natural areas. The required habitat enhancement plan applies to 1.8 acres, enhancing close to a 2:1 ratio, and is located closer to the ball park project perimeters.

The City provided extensive arguments that under SEPA, the City of Shoreline is not required to exercise its substantive SEPA authority to enhance or protect habitat in Shoreview Park. They noted that City's regulations (SMC 20.30.660) and the SEPA rules (WAC 197-11-660(1)) provide that the City may condition or deny a project based on its environmental impacts under SEPA; however, these regulations do not mandate the exercise of substantive SEPA authority to mitigate impacts. Under SEPA, a government agency must examine environmental impacts and possible mitigation measures, but it may exercise its discretion without requiring a specific substantive environmental result. The proposed mitigation plan uses the information in the EIS and provides a detailed plan to mitigate impacts to the extent determined appropriate by the City. The City argues that the level of mitigation goes beyond any legal requirement imposed on the City under SEPA or any other law.

The appellants argue that the City has ignored the recommendations contained within the FEIS and in the Hearing Examiner's recommendation to the Director in August 1999 that the mitigation should occur in the lower portion of the western part of the site. Their response to the mitigation plan as proposed by the City focuses on their belief that it is in the wrong location.

C. ISSUE 3

The appellant contends that the Decision's Conditions of Approval do not provide or protect passive recreational opportunities in the park. It ignores the Hearing Examiner's 1994 decision and the FEIS for Shoreview Park.

Discussion:

The City argues that it is not obligated to impose the mitigation measures detailed in the FEIS; however it notes that the conditions in the permit directly cite to the proposed mitigation measures in the FEIS, and require that the proposed enhancement measures be consistent in purpose with the measures identified on pages 4-22 and 4-23 of the FEIS. Furthermore, the permit conditions adopt specific FEIS guidance regarding habitat clustering, location of enhancement sites, and plant species selection.

The appellant argues that the lower bench area provides the greatest opportunity for passive recreation and enhancement of existing habitat; however, they do not specifically indicate where the City has not met specific regulatory requirements or provided for adequate mitigation in the conditions on the present proposal.

The proposal does not designate a preservation area but allows passive recreational opportunities in the park to continue. This park is designated as a "large urban park" in the *1998 Parks, Open*

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Space and Recreation Services Plan ("Park Plan"), intended to provide a mixture of active and passive recreation opportunities to serve a diversity of interests. Park Plan, p. III-2- III-3. (City Exhibit O). Boeing Creek Park (40.42 acres) is a "natural open space area/greenway" in the Park Plan, adjacent to Shoreview Park, and designated for passive recreation.

D. ISSUE 4

The appellant contends that the Shoreview Preservation Committee's involvement has been ignored in the process to protect and enhance the habitat.

Discussion:

The City notes that the Shoreview Preservation Committee was represented as a Party of Record and commented on the FEIS (City Exhibit M), was present at the pre-decisional public hearing for Clearing and Grading 1999-746, present at the neighborhood meeting on April 14, 2000, notified of the application on (City Exhibit O), and sent written comments regarding the proposal (City Exhibit C).

Based on the nature of the testimony, it is the feeling of the Hearing Examiner that the Shoreview Preservation Committee feels it has significant amounts of valuable information applicable to Shoreview Park and except in the formal hearing processes of the City, it is not involved as an interested resource.

III. FINDINGS:

1. The City of Shoreline moved the ballfield from a previously proposed location on the lower bench in Shoreview Park in response to a recommendation of the Shoreline Hearing Examiner in August 1999.
2. The recommendation of the Shoreline Hearing Examiner for mitigation referenced the lower bench because that was the site of the previously proposed ballfield and was the only area discussed for habitat enhancement at that time.
3. The ultimate decision for the appropriate recreation use and habitat enhancement of the lower bench is one to be made by the City within the overall plan for Shoreview Park.
4. The drainage plan meets the City of Shoreline Surface Water Design Manual and is consistent with the 1998 King County Surface Water Design Manual.
5. A turf management plan has been required to mitigate water quality impacts at the source of the proposed ballfield.
6. Although all requirements of the City of Shoreline's drainage regulations are technically met, there is continued concern by the Hearing Examiner that the plan may not fully consider what appears to be the unique soil/hydrologic conditions of the lower bench area that is proposed as the recipient of the site run-off and the steep slope adjacent to Hidden Land and Boeing Creek.
7. The City has broad discretion in applying mitigation under SEPA.
8. The location of the habitat mitigation area appears appropriate for the revised ballfield and parking locations.
9. The perceived lack of involvement by the appellant is not a substantive issue of the appeal.

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IV. CONCLUSIONS:

1. The City properly reviewed the clearing and grading application under current regulations of Title 20 SMC.
2. The City's SEPA Responsible Official correctly issued the Addendum to Improvements to Existing Shoreview Park Environmental Checklist (1993) and Shoreview Park Improvements Revised Environmental Checklist (1995). No significant environmental impacts are likely given the mitigation measures required of the applicant.
3. The City's decision to provide habitat enhancement in the location adjacent to the parking lot expansion is solely within their discretion. Although the Shoreview Preservation Committee would prefer the enhancement of the lower bench area, this is not required by either the plan for Shoreview Park or City regulations as mitigation for the construction of the ballfield and other associated improvements.
4. The proposed drainage plan meets technical provisions of the City of Shoreline Surface Water Design Manual and is consistent with the 1998 King County Surface Water Design Manual.
5. Although the drainage plan for the site meets applicable regulations, the Hearing Examiner is concerned that the special circumstances because of the permeability of the lower bench of the site may create a situation where potential slides within the steep slope areas may potentially endanger Hidden Lake and Boeing Creek. The City has offered to move the drainage outfall beyond 200 feet from the top of the slope; however, the Hearing Examiner does not have the technical expertise to know if that is fully adequate. It is recommended that additional analysis be done in finalizing the drainage plan by the City staff and consultants as appropriate to assure there is no potential impact of the infiltration on the steep slope areas.
6. The appellant has not met the burden of establishing that the decision of the City is not supported by the preponderance of evidence.

V. DECISIONS:

- A. Based on the foregoing findings and conclusions the appeal of the City of Shoreline's decision to grant Clearing and Grading Permit #2000-1672 for the construction of a ballfield, parking, and associated improvements at Shoreview Park is denied; however, it is recommended that prior to completing the plans for the surface drainage that the concerns and recommendations of the appellant's hydrogeologist be reviewed by City staff and appropriate consultants to assure that all measures are taken to protect the stability of the adjacent slopes and the quality of water in Hidden Lake and Boeing Creek. No further review of these plans by the Hearing Examiner is required as part of this condition.
- B. Based on the foregoing findings and conclusions, the appeal of the City of Shoreline's decision to issue a SEPA Addendum for Improvement to Existing Shoreview Park Environmental Checklist (1993) and Shoreview Park Improvements Revised Environmental Checklist (1995) is denied.

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EXHIBIT LIST: See Attached List:

PARTIES OF RECORD:

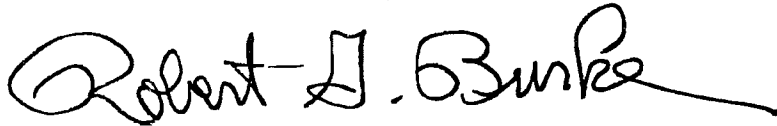
City of Shoreline: Attn: Ian Sievers, City Attorney

Wendy Barry, Director, City of Shoreline Parks Department

Richard Aramburu, Suite 209 College Club Building, 505 Madison Street, Seattle WA 98104

Shoreview Preservation Committee, Paula V. Scher, 902 NW 165th Place, Shoreline, WA 98177

Entered this 25th day of April, 2001

A handwritten signature in black ink, reading "Robert G. Burke". The signature is fluid and cursive, with a long horizontal line extending from the end of the name.

Robert G. Burke, Hearing Examiner

APPEAL:

An appeal of the Hearing Examiner's decision is governed by RCE 43.21C.075, the appeal section of SEPA statutes. Under this provision an appeal of the environmental determination must be combined with an appeal of the underlying governmental action.